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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,028	12/09/2004	Ian Boast	ENL-345-A	8758
7590 Andrew R Basile Young & Basile 3001 West Big Beaver Road Suite 624 Troy, MI 48084		07/17/2007	EXAMINER SELF, SHELLEY M	
			ART UNIT 3725	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,028	BOAST, IAN	
	Examiner	Art Unit	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 April 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3 and 5-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 14-31 is/are allowed.
- 6) Claim(s) 1,3,7-13 is/are rejected.
- 7) Claim(s) 5 and 6 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 4/27/07
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on April 27, 2007 has been considered but is ineffective to overcome the prior art reference.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *relief valve* (clms. 19, 27) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by

Altmayer (4,927,089). Altmayer discloses a jaw crusher for crushing material the jaw crusher comprising a frame (12) having a pair of opposing walls (fig. 1), a fixed jaw (14), a swing jaw (16) disposed between said walls, the jaws defining a crushing chamber (fig. 1) for receiving material, the swing jaw (16) mounted for cyclic movement in the direction of the fixed jaw (14); a cross beam (48) having first and second surfaces facing in opposite directions to one another, the cross beam adjustably disposed in a transverse axis of the frame; a toggle plate (44, 46) mounted in operative communication between a rear portion swing jaw and a first face of the cross beam wherein a hydraulic cylinder arrangement is on the opposite side of the cross beam from the toggle plate, in operative communication with a second face of the cross beam and wherein the hydraulic cylinder arrangement is pressurized to a predetermined value in use to provide an adjustable, pre-loaded reaction against the toggle plate wherein the hydraulic cylinder arrangement includes two cylinders (50) one on either side of the frame, Altmayer inherently discloses the predetermined value is greater than zero.

With regard to claim 7, Altmayer discloses wherein a hydraulic circuit is provided in communication with the hydraulic cylinder arrangement (fig. 4).

With regard to claim 8, Altmayer discloses a relief valve (fig. 4).

With regard to claim 9, Altmayer discloses means provided for adjusting spacing between the jaws (36; fig. 1).

With regard to claim 11, Altmayer discloses wherein the hydraulic arrangement is preloaded against a part of the frame. Examiner notes any element attached, coupled or connected to the frame is “a part of the frame”, therefore, it is inherent that Altmayer’s *“hydraulic arrangement is preloaded against a part of the frame”*.

With regard to claim 12, Altmayer discloses wherein the frame provides a reaction to the action of the hydraulic cylinder arrangement.

With regard to claim 13, Altmayer discloses the hydraulic cylinder arrangement is in operative engagement with the second face of the cross beam (48). Examiner notes the claims do not specify direct operative engagement, thus because all of the elements of Altmayer are in operative, i.e., working engagement with one another so as to crush rock/concrete, Altmayer inherently discloses, *“the hydraulic cylinder arrangement is in operative engagement with the second face of the cross beam (48)”*.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altmayer (4,927,089) as noted in the previous Office Action. Altmayer does not explicitly disclose the predetermined value to be between 300 and 500 bar. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Altmayer having a predetermined value between 300-500 bar because wherein the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See *In re Aller*, 105 USPQ 233.

Furthermore, Applicant fails to positively recite any criticality as it relates to a pressurized value between 300-500 bar and as such recites such value only nominally. In the absence of any positively recited criticality to the use of a pressurized value in the range of 300-500 bar such would result from routine engineering practices and is not in itself patentable.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altmayer (4,927,089) in view of Hamaguchi et al. (5,857,630) as noted in the previous Office Action. Altmayer does not disclose shim packs or wedges. Hamaguchi teaches in a closely related art the use of shims (9) so as to adjust the outlet gap between the jaws, i.e. adjust the spacing between a fixed jaw (3) and a movable jaw (4). Because the references are from a closely related art and deal with a similar problem, i.e., crushing rock between at least two opposing jaws and discharge of the crushed rock, it would have been obvious at the time of the invention to the skilled artisan to provide Altmayer with shims so as to allow for adjustability of the spacing between the jaws as taught by Hamaguchi. Further, Examiner notes the provision of

adjustability through shims is well known in the mechanical arts and does not in itself warrant patentability.

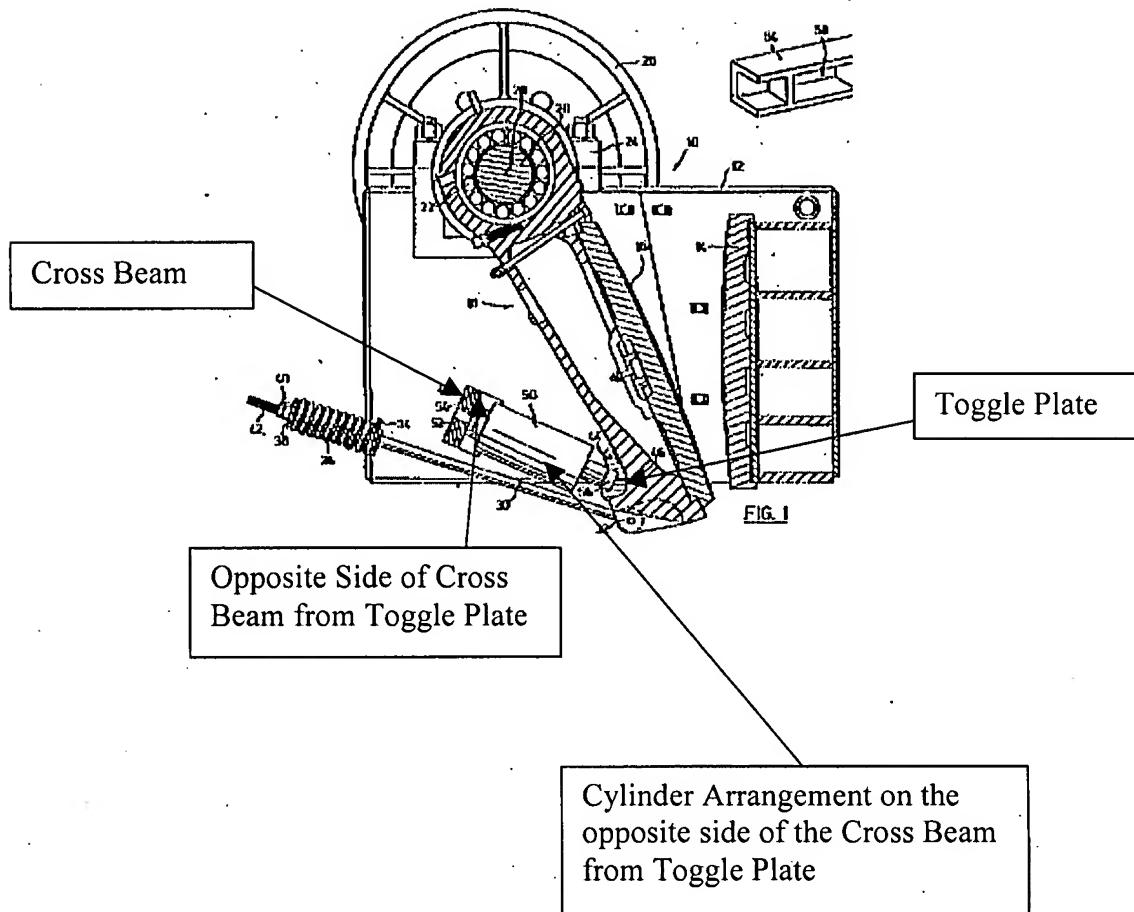
Allowable Subject Matter

Claims 14-31 are deemed allowable.

Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims for the reasons noted in the previous Office Action.

Response to Arguments

Applicant's arguments filed April 27, 2007 have been carefully considered but they are not persuasive. Applicant's remarks are drawn to the failure of the prior art, Altmayer to disclose a hydraulic cylinder arrangement on the opposite side of the cross beam from the toggle plate. Applicant argues instead that Altmayer teaches the a hydraulic cylinder arrangement (50) arranged intermediate to the toggle plate (44) and therefore not opposite of the cross beam. This argument is not found persuasive, because Altmayer clearly discloses a cross beam (48) that is opposite of the a toggle plate (44), the cross beam (48) having an opposite or opposing side to the toggle plate (44), Altmayer further discloses cylinder arrangement (50) attached or operably coupled to that side of the cross beam that is opposite of the toggle plate.



Conclusion

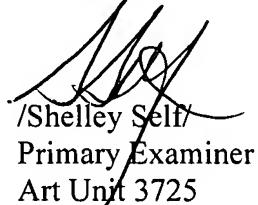
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/Shelley Self/
Primary Examiner
Art Unit 3725

July 9, 2007